

REFERENCE TITLE: right-of-way acquisition; real estate brokers

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1292

Introduced by
Senator Nelson

AN ACT

AMENDING SECTION 32-2121, ARIZONA REVISED STATUTES; RELATING TO REAL ESTATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 32-2121, Arizona Revised Statutes, is amended to
3 read:

4 32-2121. Applicability of article; exemption

5 A. The provisions of this article do not apply to:

6 1. A natural person, a corporation through its officers, a partnership
7 through its partners or a limited liability company through its members or
8 managers that deals in selling, exchanging, purchasing, renting, leasing,
9 managing or pledging the person's or entity's own property, including
10 cemetery property and membership camping contracts, and that does not receive
11 special compensation for a sales transaction or does not receive special
12 compensation or other consideration including property management fees or
13 consulting fees for any property management services performed, if the
14 majority of an officer's, partner's, member's or manager's activities do not
15 involve the acts of a real estate broker, cemetery broker or membership
16 camping broker as defined in section 32-2101.

17 2. A person holding a valid power of attorney that is being used for a
18 specific purpose in an isolated transaction and not as a method of conducting
19 a real estate business.

20 3. An attorney in the performance of the attorney's duties as an
21 attorney. Nothing in this paragraph shall be construed to allow an attorney
22 to otherwise engage in any acts requiring a license under this article.

23 4. Any receiver, a trustee in bankruptcy or any other person acting
24 under an order of a court.

25 5. A trustee selling under a deed of trust.

26 6. Natural persons who are acting as residential leasing agents or
27 on-site managers of residential rental property, who are performing
28 residential leasing activities on residential income property at no more than
29 one location during the period of the agents' or on-site managers' regular
30 workday, who do not receive special compensation for the acts described in
31 subdivisions (a) through (e) of this paragraph and who are employed by the
32 owner or the owner's licensed management agent to perform the duties
33 customarily associated with that employment. A bonus that is paid to a
34 residential leasing agent or on-site manager working under the supervision of
35 a licensed real estate broker and that is based on performance, that is
36 received no more frequently than monthly and that does not exceed one-half of
37 the agent's or on-site manager's total compensation for the time period does
38 not constitute special compensation for the acts described in subdivisions
39 (a) through (e) of this paragraph. For purposes of this paragraph
40 "residential leasing agents or on-site managers" means natural persons
41 employed by the owner or the owner's licensed management agent whose normal
42 duties and responsibilities include any one or a combination of the
43 following:

44 (a) Preparing and presenting to any person a residential lease,
45 application or renewal or any amendment of the lease.

1 (b) Collecting or receiving a security deposit, a rental payment or
2 any related payment for delivery to and made payable to a property, a
3 property manager, an owner or the location.

4 (c) Showing a residential rental unit to any prospective tenant.

5 (d) Executing residential leases or rental agreements adopted under
6 title 33, chapter 10.

7 (e) Acting on behalf of the owner or the owner's licensed management
8 agent to deliver notice pursuant to title 12, chapter 8 and title 33,
9 chapters 10 and 11.

10 7. Any officer or employee of a governmental agency who is not a
11 contract or temporary employee of the agency in the conduct of the officer's
12 or employee's official duties.

13 8. One natural person who acts as a property manager for one
14 nonresidential income property or for two or more contiguous nonresidential
15 income properties that are under common ownership and who is employed by the
16 owner or the owner's licensed management agent to perform the duties
17 customarily associated with that employment.

18 9. Natural persons who are in the employ of an employing broker or of
19 a person or entity exempt under this section, who perform clerical,
20 bookkeeping, accounting and other administrative and support duties, who are
21 not engaged in any other acts requiring a license under this chapter and
22 whose employment is not conditioned on or designed to perform duties
23 otherwise requiring a license under this chapter.

24 10. Natural persons who are in the employ of an employing broker and
25 who perform telemarketing services that are limited to soliciting interest in
26 engaging the services of a licensee or broker or gathering demographic
27 information that will be used by a licensee or broker to solicit prospective
28 buyers, sellers, lessees and lessors.

29 11. Communications media or their representatives that are primarily
30 engaged in advertising real estate and that perform no other acts requiring a
31 real estate license, if:

32 (a) The communications media or their representatives do not, directly
33 or indirectly, compile or represent that they compile information about
34 specific prospective purchasers or tenants, except that general information
35 about prospective purchasers or tenants, such as demographic and marketing
36 information, may be compiled.

37 (b) The communications media or their representatives do not make
38 representations to prospective real property sellers or landlords, or their
39 representatives, concerning specific prospective purchasers or tenants or
40 specific sales or leasing leads.

41 (c) The fee charged for advertising is based solely on the advertising
42 services provided.

43 (d) The advertisements provide for direct contact between the seller
44 or landlord and the prospective buyers or tenants, or for contact through a
45 licensed real estate broker or property management firm. The communications

1 media or their representatives shall not act as intermediaries or assist in
2 any intermediary action between prospective parties to a real estate
3 transaction, except that additional information about advertised properties
4 may be provided to prospects upon request.

5 12. Persons who perform residential property management services or
6 marketing and promotional services solely for nursing care institutions as
7 defined in section 36-401 or pursuant to life care contracts as defined in
8 section 20-1801.

9 13. A person who offers to sell or lease property that constitutes a
10 security as defined in section 44-1801 and that is offered, sold or leased in
11 compliance with title 44, chapter 12 if the person is a registered securities
12 dealer or salesperson pursuant to title 44, chapter 12, article 9.

13 14. A person who manages a hotel, motel or recreational vehicle park.

14 15. A person who, on behalf of another, solicits, arranges or accepts
15 reservations or money, or both, for occupancies of thirty-one or fewer days
16 in a dwelling unit in a common interest development.

17 16. An escrow agent in the performance of the escrow agent's duties as
18 an escrow agent, a title insurer in the performance of the title insurer's
19 duties as a title insurer or a title insurance agent in the performance of
20 the title insurance agent's duties as a title insurance agent. Nothing in
21 this paragraph shall be construed to allow an escrow agent, a title insurer
22 or a title insurance agent to otherwise engage in acts requiring a license
23 under this article.

24 17. Notwithstanding paragraph 1 of this subsection, a corporation
25 through its officers and employees that purchases, sells, exchanges, rents,
26 leases, manages or pledges its property if both of the following apply:

27 (a) The activity is only incidental to the business of the
28 corporation.

29 (b) The officers and employees engaged in the activity do not receive
30 special compensation or other consideration for the activity.

31 18. A trust company owned by a bank holding company regulated by the
32 federal reserve board or a bank in exercising its fiduciary duties under the
33 terms of a trust agreement to which real property is subject.

34 19. A person who receives a finder fee pursuant to section 32-2176 or
35 32-2197.21.

36 20. A PERSON WHO NEGOTIATES, PURCHASES, LEASES, ASSIGNS, EXCHANGES,
37 SELLS, LEASES OR ACQUIRES RIGHTS-OF-WAY, PERMITS, LICENSES AND ANY OTHER
38 INTERESTS IN REAL PROPERTY FOR OR ON BEHALF OF A PUBLIC ENTITY OR ANY UTILITY
39 PROVIDER THAT IS REGULATED BY THE ARIZONA CORPORATION COMMISSION FOR THE
40 PURPOSE OF, OR FACILITIES RELATING TO, ANY OF THE FOLLOWING:

41 (a) TELECOMMUNICATIONS.

42 (b) WIRELESS COMMUNICATIONS.

43 (c) CABLE TELEVISION.

44 (d) ELECTRIC GENERATION, TRANSMISSION AND DISTRIBUTION.

1 (e) WATER AND WASTEWATER COLLECTION, TREATMENT, DISTRIBUTION,
2 DIVERSION AND STORAGE.

3 (f) GAS, OIL AND PETROLEUM PIPELINES.

4 (g) TRANSPORTATION IF THE PERSON DOES NOT REPRESENT ANY PERSON OTHER
5 THAN THE PUBLIC ENTITY UNDERTAKING THE TRANSPORTATION PROJECT AS AN AGENT IN
6 THE PURCHASE, SALE OR EXCHANGE OF REAL ESTATE OR AN INTEREST IN REAL ESTATE,
7 RESULTING FROM RESIDENTIAL OR COMMERCIAL RELOCATIONS REQUIRED FOR THE
8 TRANSPORTATION PROJECT, REGARDLESS OF THE SOURCE OF PUBLIC FUNDING.

9 B. The commissioner may grant an exemption from the licensure
10 requirements of this article to any corporation that applies for an exemption
11 on a finding that both of the following apply:

12 1. The corporation is a nonprofit corporation that provides
13 project-based housing services and operates solely as a charitable
14 organization as defined in section 44-6551.

15 2. The corporation's sole activities related to real estate involve
16 ownership or management of residential property owned or controlled by the
17 corporation.